

Exemption No.
1142

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

JOSEPH M. BURTON
CLERK OF
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

THE BUSINESS AND PROFESSIONAL)
WOMEN'S CLUB OF THE DISTRICT OF)
COLUMBIA, INC., a corp.,)

FEB 14 1977

Petitioner)

FILED

v.)

Civil Action No. 2271

DISTRICT OF COLUMBIA,)

Respondent)

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

Petitioner appeals to this court and seeks a declaration that it is exempt from personal property taxes under D. C. Code 1973, §47-1208. Petitioner requests that the Court order a refund of 1974 Personal Property Taxes in the amount of \$114.56. Respondent denies that petitioner is entitled to the exemption. This court has jurisdiction.

I

After taking into consideration the testimony and evidence and the arguments of counsel, the Court makes the following findings of fact:

1. Petitioner is incorporated in the District of Columbia pursuant to D. C. Code 1973, §29-601.
2. Petitioner is not organized for private gain. It seeks to promote the general welfare and advancement of business and professional women, to bring about a spirit of cooperation among business and professional women, to educate the public as to what women in business and professions are doing for the

benefit of all women, to extend opportunities to business and professional women through education, and to foster community service.

3. Membership in petitioner is limited to women who are employed.

4. In furtherance of its stated objectives, petitioner has standing committees in such diverse areas as personal development, civic participation, legislation, and world affairs.

5. Petitioner has a distinguished history of public service dating from its founding. It was instrumental in the establishment of the K-9 Corps in the District of Columbia. It and its members have donated money to deserving organizations. The club has provided scholarship money for a woman medical student at George Washington University Hospital and helped to furnish a room for a female intern at the same institution. It has also sponsored programs to assist women who are released from prisons and those who are institutionalized. It often collects clothing for needy children.

6. By far the bulk of petitioner's programs are oriented towards fulfillment of "a better business woman and a better business world". To implement its program, the petitioner sponsors activities designed to meet the needs of the membership; for example, health and safety programs, a "leisure hour" for retired members, educational programs, leadership conferences, cultural and social evenings and recreational trips for its members. These programs are open to the membership

and their invited guests. Some are open to the general public although there is little effort to advertise the events outside the membership of the club.

7. Petitioner is exempt from federal income taxes under Section 101(9) of the Internal Revenue Code of 1954 (26 U.S.C. 101(9)) and has enjoyed that status since July 1943.

8. In 1953, petitioner purchased a building located at 2305 Calvert Street, N.W., Washington, D. C., to serve as a clubhouse for its members. The furnishings, household articles and furniture located in the building are owned by petitioner and are used in the furtherance of the club's activities. It is this personal property which has been taxed and constitutes the basis of the present action.

9. The clubhouse is for the benefit of the club's membership and provides office space, transient living facilities for the membership, and social function rooms. Although committee meetings and other programs are held at the clubhouse, the regularly scheduled general membership meetings are held elsewhere because the building is not suitable.

10. Petitioner derives its income primarily from membership dues, membership programs and club generated income, for example room rental. In Fiscal Year 1974, the total expenditures and disbursements of the petitioner, including the payment of the subject taxes, were slightly greater than the total income. Petitioner has paid real and personal property taxes to the District of Columbia since 1953.

11. The disputed personal property taxes were assessed for 1974. The taxes are in the amount of \$114.56 and includes late payment penalties and were paid on September 5, 1974.

II

Petitioner claims exemption from personal property taxes under two separate provisions of D. C. Code 1973, §47-1208, relying principally upon the first provision of the statute, that is, an exemption for: "[T]he personal property of all library, benevolent, charitable, and scientific institutions incorporated under the laws of . . . the District of Columbia and not conducted for private gain". In this regard, the petitioner points to a long tradition of public service and to its many ongoing projects and programs claiming these to be benevolent and charitable activities.

In the alternative, petitioner claims exemption under a provision exempting: "[L]ibraries of nonprofit organizations and household belongings located in any dwelling house or other place of abode . . . not held for sale or rent and not held for use or used in any trade or business". In support of this contention, the club notes that it is a nonprofit organization; that the current clubhouse was purchased as, and will be sold as, a dwelling house; that there are living facilities rented out on a temporary basis; that the building's basic character remains unchanged even though the present dominate use of the clubhouse is as office space; and that no portion of the building is used in any trade or business.

Petitioner also claims to have a library on the premises.

In seeking to uphold the personal property taxes assessed, respondent asserts that the club does not satisfy the statutory prerequisites for exemption under Section 47-1208. While agreeing that the petitioner undertakes worthwhile civic projects, respondent nevertheless urges upon the Court that it is petitioner's burden to show itself entitled to the exemption; that the petitioner has failed to meet that burden in that it has failed to prove that it is a charitable or benevolent institution or to prove itself the occupant of a dwelling house; that the proof shows the clubhouse is used primarily for office work and social events and the living quarters provide income for the petitioner.

III

It is clear that petitioner is neither a library nor a scientific institution. Thus, to be entitled to the exemption, the petitioner must demonstrate that it is a charitable and benevolent institution, that the property sought to be taxed is household belongings, or that the property is partially exempt as a library of a nonprofit organization. The Court finds that the petitioner has failed to sustain its burden.

In Washington Chapter of American Institute of Banking v. District of Columbia, 92 U.S. App. D.C. 139, 141, 203 F.2d 68, 70 (1953), the court stated:

Exemptions from taxation are strictly construed against those claiming the exemption, even if the claimant is a charitable or educational institution

because such exemptions are in the nature of a renunciation of sovereignty, and are at war with sound basic tax philosophy which requires a fair distribution of the burden of taxation. (Footnotes omitted.)

To be entitled to an exemption as a charitable and benevolent institution, the petitioner must be able to demonstrate that it is a charitable and benevolent institution, that it is incorporated under the laws of the District of Columbia, and that it is not conducted for private gain. In the context of Section 47-1208, the words "charitable" and "benevolent" have been construed as synonymous. Washington Club of Phi Sigma Kappa Fraternity of the District of Columbia v. District of Columbia, No. 1441 (D.C. Tax Ct. decided March 3, 1955). This Court adopts that construction.

The petitioner offered evidence showing the wide range of civic concern and involvement of itself and members. Suffice it to say here that the Court is impressed by the obvious seriousness with which petitioner and its membership have undertaken and continue to undertake to provide needed services to this community. However, the fact that the club's members, as individuals, are public spirited enough to assist in projects designed for raising money for strictly charitable organizations does not inure to the benefit of the club and does not make it a charitable institution within pervuew of the statute. Accordingly, the Court may examine only the petitioner and its functions and purposes in determining whether it is a charitable institution.

To be deemed a "charitable institution", and organization must tend to promote the "well doing and well being of social man", Ould v. Washington Hospital for Foundlings, 95 U.S. 303. 311 (1877); must particularly serve to give relief to poor and needy, Government Services, Inc. v. District of Columbia, 88 U.S. App. D.C. 360, 189 F.2d 662 (1951), cert. den. 342 U.S. 828 (1951); see District of Columbia v. Friendship House Assoc., Inc., 91 U.S. App. D.C. 137, 198 F.2d 530 (1932); and must render a "service which the public otherwise would have to assume or at least reasonably might assume", Washington Chapter of American Institute of Banking v. District of Columbia, supra at 142. It is also clear that the charitable or benevolent purpose must be primary and not collateral to the social or promotional purposes which constitute the major reason for existence. Hazen v. National Rifle Assoc. of America, 69 App. D.C. 339, 343, 101 F.2d 432, 436 (1938).

An examination of the findings and record in this case reveals that the petitioner cannot be termed a charitable or benevolent organization even though some of the activities of its members may be charitable. The stated and predominant purpose of the petitioner is to foster and promote the general welfare and advancement of business and professional women. Petitioner offers a full range and variety of programs, including educational, social and cultural programs, designed to serve that purpose, a purpose confined to a narrowly drawn and specifically defined group. The right to receive full and

direct benefit from the petitioner: "[D]epends upon the fact the voluntary association with a particular organization primarily private in character . . . rather than upon some qualification which involuntarily affects or may affect the whole people". Washington Chapter of American Institute of Banking v. District of Columbia, supra at 143. It is this narrow focus which in the opinion of this Court prevents the petitioner from being a charitable or benevolent organization notwithstanding the fine work which it collaterally undertakes and in which its members are involved.

IV

To qualify for an exemption under the household belonging exemption, the petitioner must prove the property in question is household belongings, located in a dwelling house, kept for the use of the occupant of the house and not held for rent or sale or for use in any trade or business.

The club argues that the clubhouse was a dwelling house when purchased and that it retains that essential quality as long as any portion of the clubhouse is used as a living unit. It also argues that there are persons who occupy the premises although temporarily and that the premises would be sold as a dwelling house if placed on the market. The gist of the petitioner's argument in this regard seems to be that the current use of the building is irrelevant if the property under consideration can be classified as a "dwelling house" by sight.

Although it occupies the premises and is the owner of the personal property located on the premises, petitioner must meet the requirement of occupying a "dwelling house". This Court finds that the building located at 2305 Calvert Street, N.W. is not a "dwelling house" within the meaning of Section 47-1208 and that the club is not entitled to an exemption. A "dwelling house" is "[T]he house in which a man lives with his family; a residence, habitation . . . ". Black's Law Dictionary (4th ed 1968). It is a building "[U]sed and resided in as a home by a man and his family". Lietz v. Pfeuhler, 215 So. 2d 723, 726 (Ala. 1968). The subject property is not a dwelling house except in the sense that it is sometimes used by transient guests, it is a base of operation for a corporation.

Petitioner argues that the outward appearance and the preceding use of the building as a private residence should be controlling. However, it is to the present and predominant use of the premises which the Court looks, for "[T]he mere fact that a building was originally designed as a dwelling is not controlling when its later use is no longer as a dwelling". Marston v. State, 264 A.2d 127, 128 (Md. Ct. Spec. App. 1970). The present and principal use made of the subject building as an office and meeting and recreational facility precludes its classification as a "dwelling house".

V

The last claim for exemption is based on the argument that the property contains a library of a nonprofit corporation. In order to gain this exemption the petitioner must show that

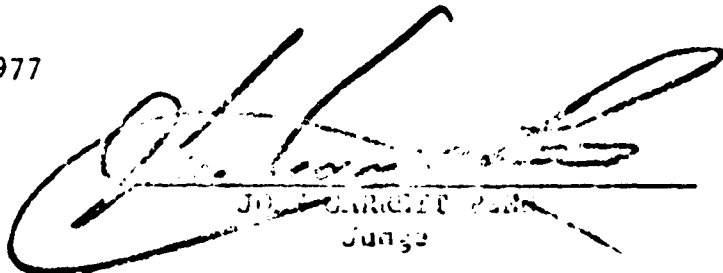
it is a nonprofit corporation with a library and must prove the value of the collection. It is petitioner's burden to establish the existence of the library on the premises of the subject property. Here the Court finds that petitioner has failed to do so. Although mentioned in the pleadings and petitioner's trial memorandum brief, there was no testimony or other evidence adduced at trial which would prove the existence of a "library". Moreover, even if the other prerequisites had been proven, the petitioner failed to offer any evidence relating to the value of the library collection. Such an omission would lead the Court to speculate and to determine without any factual basis what amount, if any, should be deducted for the library. This the Court cannot do.

O R D E R

Taking all of the above into consideration this Court concludes that the petitioner has failed to demonstrate that it is entitled to an exemption under D. C. Code 1973, §47-1208 and it is hereby

ORDERED that decision is entered in favor of the respondent and the Petition is dismissed with prejudice.

Dated: February 10, 1977



J. L. GARRET
Judge

Maurine Abernathy, Esq.
812 Bar Building
910 - 17th St., N.W.
Washington, D. C.

Richard Amato, Esq.
Assistant Corporation Counsel
District Building
Washington, D. C.

Copies mailed postage prepaid
to parties indicated above on
5/16, 1977.

Jean Serenius